

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEVEN CRAM,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-03-0105

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held at the Department of Social and Health Services, 800 West Court Street, Pasco, Washington, on October 27, 2004.

1.2 **Appearances.** Appellant Steven Cram was present and was represented by Spencer Thal, General Counsel for Teamsters Local 117. David La Raus, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of his suspension followed by dismissal for neglect of duty, gross misconduct, and willful violation of agency policy. Respondent alleges Appellant engaged in inappropriate interpersonal and physical behavior with another employee and an offender.

II. FINDINGS OF FACT

2.1 Appellant Steven R. Cram was a permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on October 29, 2003.

2.2 By letter dated September 30, 2003, Superintendent Tom Donahue notified Appellant of his suspension, effective October 1, 2003, through October 15, 2003, followed by dismissal, effective at the end of his shift on October 15, 2003. Mr. Donahue alleged that Appellant addressed a co-worker in a confrontational, derogatory, and unprofessional manner while in the presence of an inmate and attempted to provoke the inmate by addressing him in an aggressive and intimidating manner and poking the inmate in the chest.

2.3 Appellant began his employment with Department of Corrections in 1988. Appellant has not been the subject of previous formal disciplinary action; however, he has received the following informal counseling:

- On April 10, 2003, Lt. Phillips met with Appellant to discuss an inappropriate remark Appellant made to an offender.
- On April 3, 2003, Appellant received a letter of concern for failing to follow a supervisory directive.
- On March 25, 2003, Appellant received "corrective discussion memo" regarding his lack of communication with his supervisor.
- On January 9, 2003, Appellant received letter of reprimand for making inappropriate sexual comments and for speaking to his supervisor in an inappropriate and unprofessional manner.
- On June 29, 2002, Appellant received a memo of concern addressing his temper following an inappropriate comment he made to staff in the medical unit.
- On June 21, 2002, Appellant received a memo of expectations after he acted in a confrontational manner toward an inmate. The memo directed Appellant to display professional conduct, use appropriate language, and refrain from using foul/abusive language during interactions with inmates.

- On August 10, 2001, Appellant received a letter of reprimand after losing a set of security keys.
- On December 15, 2000, Appellant received a letter of reprimand for calling an offender a “rat.” Appellant was directed to act in a professional manner when dealing with inmates.
- On October 26, 1997, Appellant received a letter of reprimand for making inappropriate comments (“this is bullshit” and “I don’t really give a shit if it’s inappropriate”) and engaging in inappropriate behavior by flinging a wooden block onto the floor after becoming angry.

2.4 Due to the ongoing concerns with Appellant’s lack of interpersonal skills, displays of anger, and inappropriate comments, the department provided him with conflict management training. In addition, Appellant received training on how to communicate with inmates in a professional manner and techniques to deescalate any tense situations.

2.5 On June 17, 2003, Office Assistant Senior Mona Van Hollebeke was meeting with inmate Edward K. in her office regarding his participation in a substance abuse program. Appellant approached the door to Ms. Van Hollebeke’s office and asked her if the inmate was bothering her and whether she wanted the offender to leave. Ms. Van Hollebeke responded “no” and that everything was fine. Appellant also questioned Ms. Van Hollebeke about whether she had been promoted to a counselor position. Ms. Van Hollebeke inferred that Appellant’s line of questioning was meant to question her authority to meet with the inmate.

2.6 Appellant turned his attention to inmate Edward K. who was seated in a chair to the side of Ms. Van Hollebeke’s desk. Appellant told the inmate that his identification tag (ID) was placed too low on his shirt and directed him to move the ID higher. The inmate moved the ID slightly higher, but it was still too low. Appellant again directed Edward K. to move the ID higher. The inmate moved the tag a little higher, and Appellant again told him it was still too low. The inmate asked Appellant where he wanted the ID placed. What occurred next is in dispute.

1 2.7 Ms. Van Hollebeke and inmate Edward K. both testified that Appellant poked Edward K. in
2 the chest to show him where he wanted the ID placed. On the other hand, Appellant testified that
3 he pointed to the area on the inmate's chest where the nametag should be placed. Appellant denied
4 making any physical contact with the inmate. To support his version of the events, Appellant
5 presented testimony from CO Jason Abregana who also claimed that Appellant pointed to the
6 inmate's chest but did not make contact. However based on where Appellant was standing in the
7 entrance into Ms. Van Hollebeke's office and based on where CO Abregana was standing at the
8 duty desk, we find he could not have had a clear view of the events. Furthermore, Ms. Van
9 Hollebeke's testimony corroborates the inmate's testimony, and we find no reason for Ms. Van
10 Hollebeke to be untruthful. Therefore, we find that Appellant did poke the inmate in the chest. Ms.
11 Van Hollebeke also credibly testified, and we find that Appellant's manner during the incident was
12 confrontational and condescending.

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14 2.8 After the inmate complied with Appellant's directive and moved the ID up, Appellant said
15 words to the effect of, "I bet you'd like to get up out of that chair and hurt me" and that he had been
16 in the corrections field a long time and was "cynical."

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18 2.8 Respondent has adopted Policy 410.200, which outlines authorized use of force and use of
19 force techniques. The policy instructs officers to exercise good judgment and to use only the
20 amount of force necessary to resolve an incident and provides that the level of force used must be
21 directly related to the degree of resistance and/or level of threat presented by the offender.

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23 2.9 Superintendent Tom Donahue was Appellant's appointing authority at the time of the
24 incident. After learning of Appellant's encounter with Ms. Van Hollebeke and inmate Edward K.,
25 Mr. Donahue met with Appellant. During the meeting, Appellant denied he created an
26 unprofessional or dangerous situation and denied poking the inmate. In determining whether to

1 believe Appellant or Ms. Van Hollebeke and the inmate, Mr. Donohue found no reason for Ms. Van
2 Hollebeke to fabricate her portrayal of the event. Although Mr. Donohue would not normally
3 believe the word of an inmate over that of a staff person, he found that Ms. Van Hollebeke
4 corroborated the inmate's claim that Appellant poked him. Mr. Donohue concluded Appellant
5 acted in an unprofessional manner toward Ms. Hollebeke, was confrontational and aggressive
6 toward inmate Edward K., and engaged in an unauthorized use of force when he poked Edward K.
7 in the chest.

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9 2.10 In determining the level of discipline, Mr. Donahue considered Appellant's length of
10 service, employment record, and his history of corrective actions. Mr. Donahue also considered a
11 discussion he had with Appellant in January 2003 regarding a letter of counseling he received for
12 making an inappropriate comment to a fellow staff member and for speaking to his supervisor in an
13 inappropriate and unprofessional manner. At that time, Mr. Donahue warned Appellant that his
14 behavior had to change because any future misconduct would not be tolerated and would result in
15 serious consequences. Mr. Donahue ultimately determined that termination was warranted based on
16 the seriousness of Appellant's misconduct toward Ms. Van Hollebeke and inmate Edward K. and
17 because Appellant had demonstrated an inability to modify his behavior.

18 19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent argues that credible evidence supports that Appellant acted in an inappropriate
21 manner toward Ms. Van Hollebeke, and he acted aggressively toward the inmate. Respondent
22 argues that Appellant's behavior toward the inmate was confrontational and could have escalated
23 into a potentially violent situation. Respondent argues that Appellant's history with the department
24 shows a pattern of escalation in his behavior despite repeated attempts to counsel him. Respondent
25 asserts Appellant also had notice from the superintendent that future displays of anger and
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1 inappropriate conduct would lead to termination. Despite this warning, Appellant lost his temper
2 and behaved in an unprofessional manner.

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4 3.2 Appellant acknowledges he met with the superintendent who warned him about his
5 behavior; however because no prior formal discipline was imposed, termination is too severe
6 especially in light of his long tenure with the department. Appellant asserts that he was not
7 confrontational or aggressive and claims the inmate was “playing games” with him by refusing to
8 comply with his directive to place his ID badge in the appropriate spot. Appellant argues that under
9 the circumstances, termination is too severe.

10 11 **IV. CONCLUSIONS OF LAW**

12 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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14 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
15 the charges upon which the action was initiated by proving by a preponderance of the credible
16 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
17 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep’t of
18 Corrections, PAB No. D82-084 (1983).

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20 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
21 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep’t
22 of Social & Health Services, PAB No. D86-119 (1987).

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24 4.4 Respondent has proven by a preponderance of the credible evidence that Appellant
25 neglected his duty when he addressed Ms. Van Hollebeke in a confrontational, derogatory, and
26 unprofessional manner while in the presence of an inmate and attempted to provoke inmate Edward

1 K. by addressing him in an aggressive and intimidating manner. Furthermore, Appellant neglected
2 his duty, employed poor judgment, and exceeded the level of force necessary, under the
3 circumstances, when he poked Edward K. in the chest.

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5 4.5 Willful violation of published employing agency or institution or Personnel Resources
6 Board rules or regulations is established by facts showing the existence and publication of the rules
7 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
8 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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10 4.6 Inmate Edward K. was not acting in a manner that would authorize Appellant to employ any
11 physical contact with him. Policy 410.200 strictly limits the circumstances under which a
12 correctional officer can use force on an inmate, and that criteria was not present when Appellant
13 poked inmate Edward K. in the chest. Respondent has met its burden by proving by a
14 preponderance of the credible evidence that Appellant's use of unnecessary force against Inmate
15 Edward K. willfully violated DOC policies.

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17 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
18 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
19 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
20 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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22 4.8 Appellant displayed poor judgment when he addressed Edward K. in a provocative and
23 confrontational manner. Although Edward K. did not promptly comply with Appellant's directives
24 to move his badge higher, Appellant, as a senior officer with many years of experience, should have
25 taken appropriate measures to correct the inmate rather than provoke him by poking him in the
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1 chest. Respondent has proven that poking the inmate in the chest was unwarranted under the
2 circumstances and Appellant's actions were flagrant and constitutes gross misconduct.

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4 4.9 Although it is not appropriate to initiate discipline based on prior formal and informal
5 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
6 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
7 D93-163 (1995).

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9 4.10 In determining whether a sanction imposed is appropriate, consideration must be given to
10 the facts and circumstances, including the seriousness and circumstances of the offenses. The
11 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
12 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
13 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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15 4.11 In determining the level of discipline, we have considered Appellant's length of service, the
16 prior warnings he received, and the nature of his actions here. Appellant has a long history of
17 demonstrating he is unable to exercise discipline, restraint, and good judgment in his performance
18 as a correctional officer. Appellant failed to present mitigating factors for why the termination
19 should be reversed; therefore, we conclude the discipline is warranted, and the appeal should be
20 denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Steven R. Cram is denied.

DATED this _____ day of _____, _____.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Busse Nutley, Vice Chair

Gerald L. Morgen, Member